

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**NOTICE OF FILING MDL PLAINTIFFS' PRESENTATION PURSUANT TO THE
ORAL REQUEST OF THE COURT DURING THE GSK SETTLEMENT FINAL
APPROVAL HEARING ON JULY 19, 2007**

Pursuant to the oral request of the Court at the GSK Settlement Final Approval hearing conducted on July 19, 2007, MDL Co-Lead Counsel hereby submit the presentation relied upon at the hearing. The presentation is attached hereto as Exhibit A.

DATED: July 23, 2007

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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on July 23, 2007, I caused copies of **NOTICE OF FILING MDL PLAINTIFFS' PRESENTATION PURSUANT TO THE ORAL REQUEST OF THE COURT DURING THE GSK SETTLEMENT FINAL APPROVAL HEARING ON JULY 19, 2007** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman
Steve W. Berman

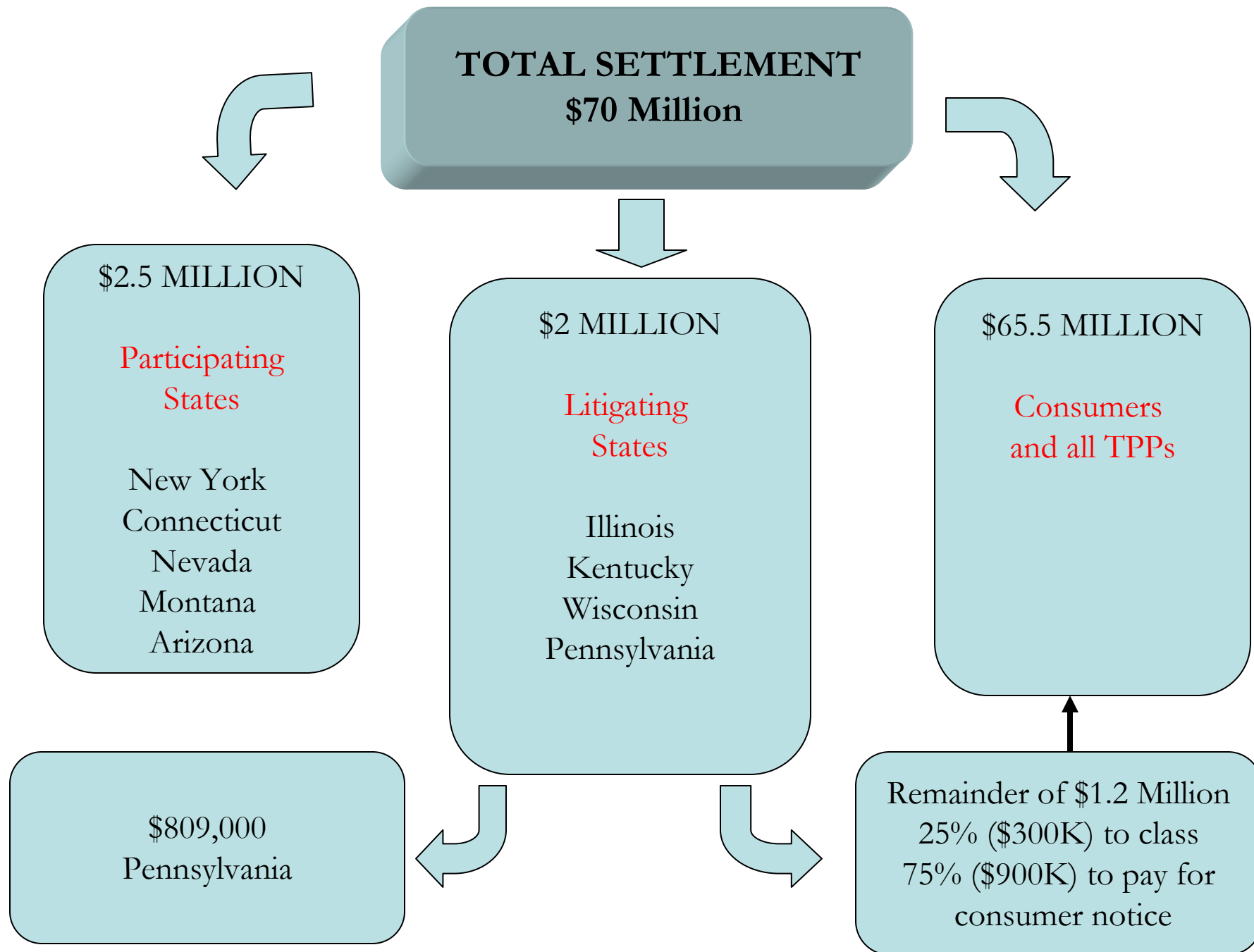
EXHIBIT A

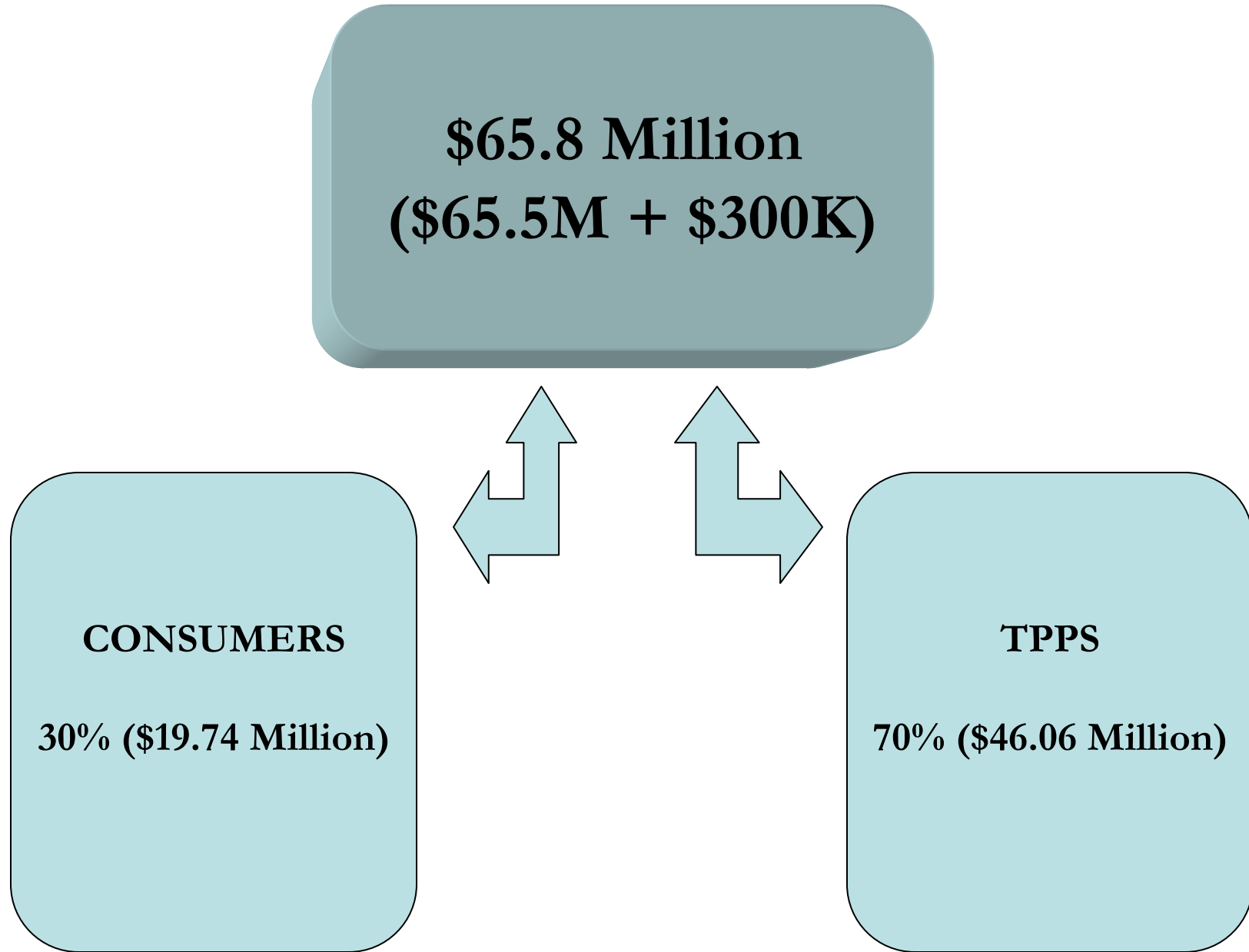
AWP GSK MDL
SETTLEMENT

MDL Plaintiffs' Presentation

Final Approval Hearing

An Overview of the GSK Settlement





Recovery Relative to Damages

Consumers

- Consumers are recovering more than 62% of their total damages
- Consumers damages \$31.7 Million
- Consumer recovery \$19.74 Million plus \$900K for notice or \$20.65 Million
- $\$20.65 \text{ Million} / \$31.7 \text{ Million} = 62\%$

What Do Consumers Get?

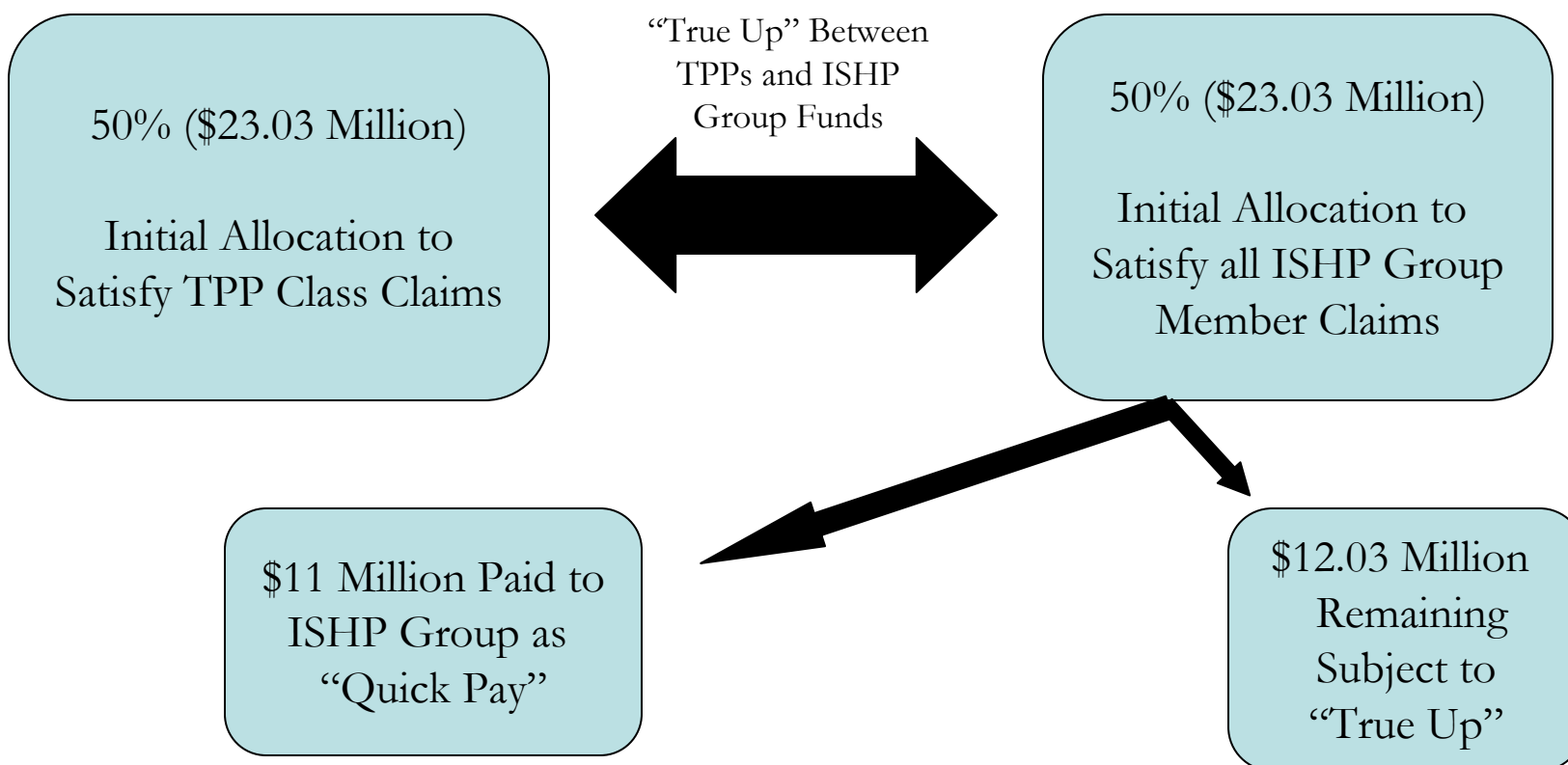
- After massive notice program, there are 12,895 consumer claims
- Every consumer will receive at least their single damage and some will receive more
- The total pot available to consumers is more than 62% of all consumer damages

Recovery Relative to Damages

TPPs

- TPPs are recovering 12% of their total damages
- TPP damages \$384 Million
- TPP recovery \$46.06 Million
- $\$46.06 \text{ Million} / \$384 \text{ Million} = 12\%$

\$46.06 Million for All TPP Claims



ISHP Quick Pay

- Other than the \$11 Million in Quick Pay, ISHP Group Members are treated identical to TPP Class Members in process as well as substance
- Must submit the same claim documentation as Class TPPs
- Subject to an identical audit process from Claims Administrator as Class TPPs
- Share equally in all expenses, including attorneys fees, notice and claims administration with all Class TPPs

True Up Between TPP Class and ISHP Group Members

$$\text{TPP Class \% of total TPP Pot} = \frac{\text{Total Class TPP Recognized Claims}}{\text{TPP Class Recognized Claims} + \text{ISHP Group Recognized Claims} + \text{TPP Opt-Out Recognized Claims}}$$

$$\text{ISHP Group \% of total TPP Pot} = \frac{\text{Total ISHP Group Recognized Claims}}{\text{TPP Class Recognized Claims} + \text{ISHP Group Recognized Claims} + \text{TPP Opt-Out Recognized Claims}}$$

GSK Refund

- No refund to GSK based on Consumer Opt-outs
- GSK refund results only from TPP Opt-outs
- Calculated to equal the amount the TPP Opt-Out would have received from the Settlement if they filed a claim

TPP True Up Example

Assumptions:	TPP Recognized Claim Total	=	\$39 Million
	ISHP Recognized Claim Total	=	\$59 Million
	TPP Opt-Out Recognized Claim Total	=	\$2 Million

TPP% =	$\frac{\$39 \text{ Million}}{\$39\text{M} + \$59\text{M} + \$2\text{M}}$	= 39%	x \$46.06 Million	= \$17,963,400
ISHP% =	$\$59 \text{ Million}/\100M	= 59%	x \$46.06 Million	= \$27,175,400
TPP Opt-Out =	$\$2 \text{ Million}/\100M	= 2%	x \$46.06 Million	= \$921,200

ISHP Group Reversion Payment = \$27,175,400 – \$11M Quick Pay = \$16,175,400

Class Claim Amount Calculations

- Claims for all class members and ISHP Group members calculated by multiplying the total “Out of Pocket” expenditure multiplied by a “Recognized Claim Percentage” for each GSK Drug

Group A (Kytril + Zofran) RCP = 50%

Group B (all other drugs) RCP = 5%

Class Claims Amount Calculations

- Consumer Claims Subject to a \$100 Minimum Payment
- Consumer will be paid the greater of his/her recognized claim or \$100

Disposition of Excess Funds Not Distributed to Class Members

- Disposition of any funds remaining in the consumer pot after distribution subject to a binding mediation with MDL Mediator Eric Green
 - All parties are entitled to participate, including States, Consumers, TPPs, ISHP Group
-
- Cannot be awarded to GSK
 - Eric Green's decision subject to review by this Court

Payment of Expenses

- Expenses related to notice to consumers & TPPs to date \$3.2 Million. Over \$3.1 Million related to Consumer Notice.
- Total Expenses to complete administration & settlement (phone bank, website, claims processing) estimated to be approx \$3M.
- All expenses are shared by each constituency in proportion to the relative amount of funds designated to that constituency.

Consumers 30% of all expenses

TPPs 35% of all expenses (50% of 70%)

ISHPs 35% of all expenses (50% of 70%)

What is Being Released?

Includes: All claims related to drug price published (AWP, SLP, WAC, NWP, WWP, and Direct Price) and any marketing related to such price, that were or could have been alleged in the MDL Complaints as they relate to the drugs subject in the Settlement.

Excludes: breach of contract, economic injury claims, product liability, breach of warranty, personal physical injury, intellectual property, and any claim related to efficacy, safety, or manufacture of GSK drugs.

How was Settlement Accomplished?

Complex Litigation

- Review 2.8 Million pages produced by GSK
- Creation of a coded database of documents
- Analyze transactional data
- Expert analysis & review
- 45 GSK specific depositions
- Non-Party Discovery
- Motion Practice (Discovery)
- Motion Practice (Dispositive Motions / Class Certification)

Global Settlement Discussions

- Span a total of 2 years
- Detailed exchange of factual & legal arguments
- Detailed analysis & discussion of damages
- Involved expert analysis on both sides
- Extensive use of MDL Mediator Eric Green
- Interim phone calls back and forth in-between mediation sessions

Global Settlement Discussions

Process included not just Co-Leads and GSK Counsel, but also included:

- Attorneys General of Participating States
- In-House council for BCBS of Massachusetts
- Representative of Pipefitters Health & Welfare Fund
- Lead Counsel for ISHP Group
- Representatives of consumer groups

Allocation of Global Fund

- Each constituency represented by separate counsel
- Co-Leads did not participate
- Consumers represented by Dianne Nast of Rhoda Nast and Kent Williams of Williams Law Firm
- TPPs represented by Jonathan Karmel of The Karmel Law Firm assisted by ISHP group counsel Richard Cohen of Lowey Dannenberg.

Allocation of Global Fund

- Once allocation between States, Consumer and TPPs accomplished, TPPs and ISHPs negotiated the split of TPP funds
- Co-Lead counsel helped to structure the True Up process based on past experience

What Has Happened Since Preliminary Approval of the Settlement?

- I. Notice to the Class
- II. Survey of Consumer Opt-Outs
- III. Objections to the Settlement

Notice to the Class

- Notice to consumers and TPPs by direct mail and publication
- Web page (www.gsksettlement.com) established to disseminate information and forms to class members
- Call center established to answer class member's questions about the Settlement

Notice to Consumers

- Direct Mail: 2.5 Million letters to Part B Consumers enclosing Notice, Claim Form and Opt-out Form at cost of \$1.3 Million
- Publication: Approximately \$1.8 Million spent on publication of notice in national media from February to March, 2007 including:

- Parade Magazine
- USA Weekend
- Better H&G
- Jet Magazine
- Sports Illustrated

- National Geographic
- People
- Reader's Digest
- Selecciones (Spanish)
- Time
- US News & World Rpt

Notice to TPPs

- Direct Mail: 43,000+ letters to TPPs nationally enclosing notice and claim form
- Publication: Noticed published in national TPP trade magazines in February 2007 including:

- National Underwriter Life & Health
- Human Resources Magazine

TPP Claims/Opt-Outs

- 2,028 claims from TPP class members
- Processing/auditing of claims underway. Process includes:
 - Verifying receipt of correct data
 - Notification of claim deficiency/time to cure
 - Elimination of any overlap in claims between TTPs or among TTPs & ISHPs
 - Calculation of recognized claims for each TTP
- Based on past experience 9-12 months before checks mailed

TPP Claims/Opt-Outs

- 12 TPP Opt-Outs
- Listed on Exhibit 4 to Declaration of Thomas Glenn
- Each Opt-Out relatively small in size
- Will not result in a large refund to GSK

Consumer Claims/Opt-Outs

- To date 12,895 claims filed by Consumer Class Members
- Processing/Auditing of claims underway. Process includes:
 - Verifying receipt of valid proof of payment
 - Notification of deficiency/ time to cure
 - Audit of sample of claims and outliers
 - Calculation of recognized claim for each consumer
- Class counsel has requested that CCS prioritize processing of consumer claims
- Based on past experience checks mailed in 5-6 months

Consumer Claims/Opt-Outs

- CCS has entered approximately 2000 consumer claims into its database to date
- Based on these *unaudited* claims to date the average consumer claim is \$209
- Based on this preliminary average, total of 12,895 claims results in total payment to consumer claimants of \$2.7 Million

Consumer Claims/Opt-Outs

- 21,365 Consumers filed requests for exclusion
- Evidence that some consumers inadvertently filed for exclusion while intending to file a claim
- Suspicion that many consumers who opted out were not in fact class members (did not pay out of pocket)

Opt-Out Survey Results

- 15.65% of survey sample determined to be actual class members
- Of this group, 16% indicated they intended to file a claim by submitting opt-out form
- Another 18% of the group contacted indicated that if given the chance they would file a claim and withdraw their opt-out
- Court approved the mailing of another claim form mailed to everyone who filed an exclusion, returnable by July 31st, 2007

Opt-Out Survey Results

- 21,365 consumer Opt-Out forms

$$15.65\% \text{ of } 21,365 = 3,343$$

$$\text{minus } 16\% \text{ of } 3,343 = 2,809$$

2,809 true Consumer Class Members intended to
exclude themselves from the Settlement

Opt-Out Survey Results

- Those surveyed gave a number of reasons for decision to Opt-Out
 - 30% could not find their proof of payment
 - 28% did not understand terms or whether they were eligible
- Only 2.5% said they wanted to preserve their right to sue on their own

Objections to the Settlement

- 1 TPP objection from Health Care Services Corporation (Docket No. 4416). **Withdrawn.**
- 1 Consumer objection from Demra Jordan (Docket No. 4403).
- 1 objection from Commonwealth of PA (Docket No. 4427).

Objections to the Settlement

- Demra Jordan provides no substantive basis for objection other than an unsupported statement that the settlement class cannot be certified “due to a lack of predominance of common issues.”
- This Court has addressed all aspects of class certification, including issues related to predominance under Rule 23 in its August 16, 2005 Order.

Objections to the Settlement

- Commonwealth of PA objects to the participation by TPPs and ISHPs in any mediation over excess consumer funds
- PA entered into its' agreement with GSK on 2/12/07, six months after the Settlement Agreement was made public
- PA's separate settlement agreement expressly acknowledges the terms set forth in the Settlement Agreement regarding the mediation
- PA accepted those terms and \$809,000 as a participating state under the terms of the Settlement Agreement

Why is the Settlement Fair, Adequate and Reasonable?

Factors to Consider

- Comparison of Settlement with likely results of litigation
- Stage of the litigation at settlement
- Quality of Counsel
- Conduct of the Negotiations
- Risk, complexity, expense and duration of the litigation

In re Compact Disc., 216 F.R.D. at 206

Comparison of Settlement to Likely Results of Litigation

- Damages Estimates from Declaration of Raymond Hartman in Support of Plaintiffs' Claims of Liability and Calculation of Damages (Filed Under Seal on 12/15/05)
- Dr. Hartman used a zero threshold for liability and damages for Class 1 and Class 2 (But for AWP=ASP)
- Class 1 (Part B Consumers) = \$7.7 Million
- Class 2 (MediGap TPPs) = \$38 Million
- Class 3 (TPPs and Consumers) = \$370 Million

Total Single Damages = \$415 Million

Comparison of Settlement to Likely Result of Litigation

Total Recovery = \$65.5M + \$1.2M from
Litigating State Fund = \$66.7 Million

\$66.7M / \$415M = Total Recovery of 16% of
Damages

Comparison of Settlement to Likely Result of Litigation

Consumer Damages

Class 1 = \$7.7 Million

Class 3 damages to consumers approx 6.5% of total or
6.5% of \$370M = \$24 Million

Total Consumer Damages = \$31.7 Million

Total Consumer Damages = 7.6% of total damages yet
they receive 30% of the Fund

Comparison of Settlement to Likely Result of Litigation

TPP Damages

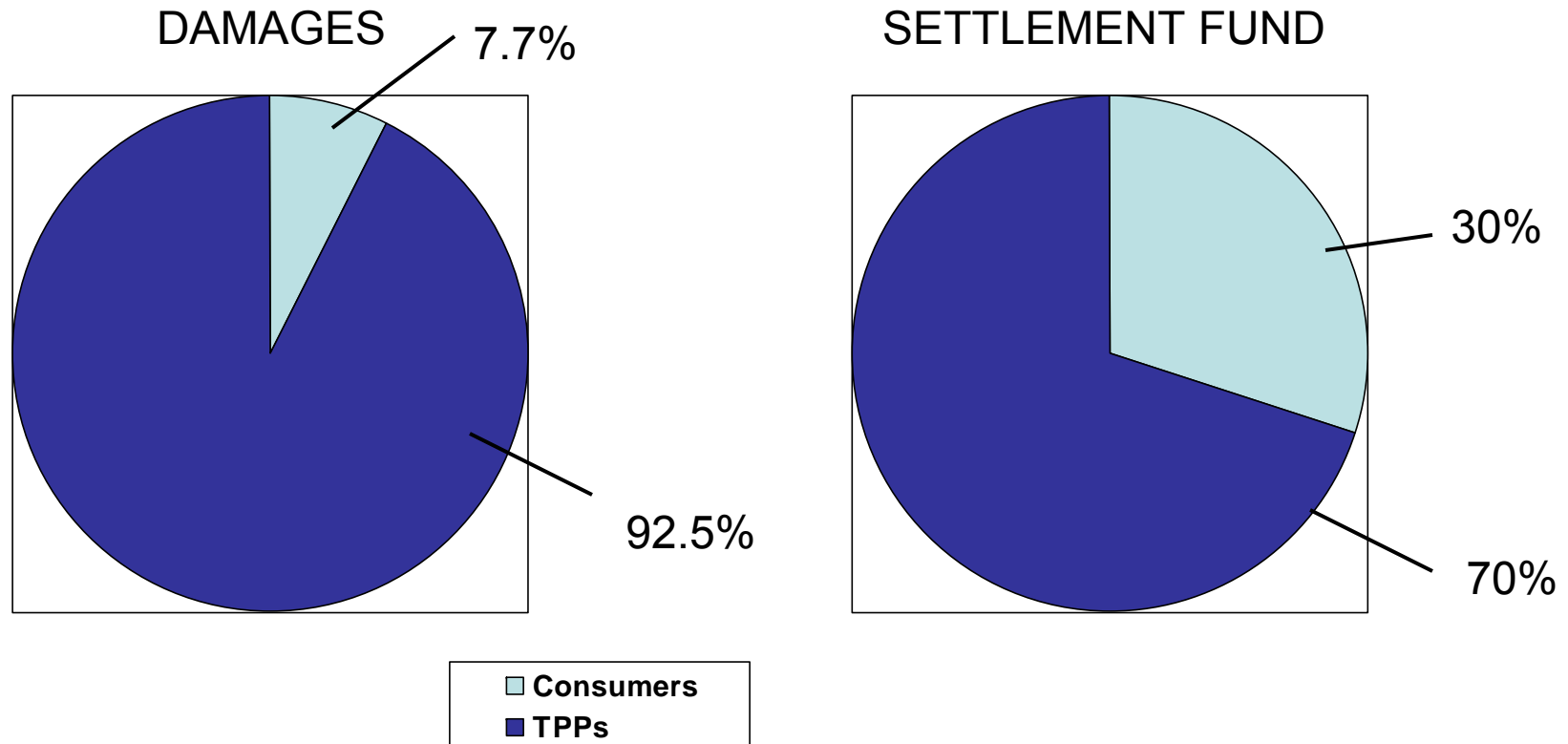
Class 2 = \$38 Million

Class 3 damages to TPPs approx 93.5% of total or
93.5% of \$370M = \$346 Million

Total TPP Damages = \$384 Million

Total TPP Damages = 92.5% of total damages yet they
receive 70% of the Fund

Damages vs. Recovery



Factors to Consider

- Stage of the litigation at settlement
- Quality of Counsel
- Conduct of the Negotiations
- Risk, complexity, expense and duration of the litigation

Attorneys' Fees

Aggregate Loadstar Crosscheck

$$\frac{\$52,279,201 \text{ (total loadstar)}}{\$21,615,000 \text{ (fee request)}} = .38 \text{ multiplier}$$

$$\frac{\$52,279,201 + \$5,561,128 \text{ (expenses)}}{\$21,615,000} = .34 \text{ multiplier}$$

“GSK Only” Crosscheck

- Assume 75% of work done for Track I
- 5 Track I Defendants (20% each)

\$57M loadstar x 75% x 20% = \$8.55M

\$5.6M expenses x 75% x 20% = \$840K

\$21,615,000 fees - \$840K GSK expenses = \$20.77M

$$\frac{\$8.55\text{M}}{\$20.77\text{M}} = 2.4 \text{ multiplier}$$